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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAII

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the
Thirty Meter Telescope at the Mauna Kea
Science Reserve, Kaohe Mauka, Hamakua
District, Island of Hawaii,
TMK (3) 4-4-015:009

CASE NO. BLNR-CC-16-002

TMT INTERNATIONAL OBSERVATORY,
LLC'S EXCEPTIONS TO THE PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION AND ORDER
ISSUED JULY 26, 2017; CERTIFICATE OF
SERVICE

**TMT INTERNATIONAL OBSERVATORY, LLC'S
EXCEPTIONS TO THE PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER ISSUED JULY 26, 2017**

TMT INTERNATIONAL OBSERVATORY, LLC ("TIO"), by and through its undersigned counsel, hereby submits these Exceptions ("Exceptions") to the Proposed Findings of Fact, Conclusions of Law and Decision and Order issued July 26, 2017 by Hearing Officer, the Honorable (ret.) Judge Riki May Amano ("HO Proposed Order"), pursuant to Hawai'i

Administrative Rules (“HAR”) § 13-1-42. While TIO substantially agrees with the findings of fact, conclusions of law, and conditions set forth in the HO Proposed Order, TIO submits these Exceptions, seeking to add conditions to the HO Proposed Order that are necessary in light of the additional findings that the Hearing Officer proposed.

I. EXCEPTIONS

On May 30, 2017, the University of Hawai‘i at Hilo and TMT International Observatory, LLC filed their Joint [Proposed] Findings of Fact, Conclusions of Law, and Decision and Order (“UH/TIO Proposed Order”).

On July 26, 2017, the Hearing Officer issued the HO Proposed Order. The HO Proposed Order included several findings of fact (“FOF”) and conclusions of law (“COL”) that were different from or not addressed in detail in the UH/TIO Proposed Order. These additional findings included extensive background information regarding cultural practices and testimony from numerous witnesses, including:

- Testimony regarding the sacredness of Mauna Kea and traditional and customary practices as set forth in the Written Direct Testimonies of Kuulei Kanahale, Manulani Aluli Meyer, Hawane Rios, and B. Pualani Case. *See* FOF 361-423; 724-725; 866-867; 972-973.
- Testimony regarding cultural practices on the Northern Plateau and contemporary equinox and solstice practices as set forth in Tr. 1/11/17 at 129:10-130:19 (B. Pualani Case); Tr. 2/13/17 at 196:19 – 198:3 (Pisciotta). *See* FOF 402; 758.

In light of these additional findings in the HO Proposed Order, TIO respectfully requests that the HO Proposed Order be amended to include additional conditions as set forth below that address the potential impacts to the cultural practices and resources set forth in the additional findings. TIO also proposes to amend Condition No. 18 of the HO Proposed Order to ensure it is consistent with current law, as also set forth below.

II. ADDITIONAL CONDITIONS REGARDING CULTURAL PRACTICES

For all the reasons set forth herein, and all other reasons, evidence, and authorities appearing of record, TIO respectfully requests that the following additional conditions be made to the HO Proposed Order.

1. UHH shall consult with the Kahū Ku Mauna Council and cultural practitioners to the extent feasible to develop a plan to establish an appropriate area on Mauna Kea to be used by native Hawaiians for religious and cultural purposes.
2. UHH shall continue to allow reasonable access to the area set aside for the exercise of any native Hawaiian traditional and customary cultural practices to the extent feasible, reasonable and safe. The setting aside of this area shall be in addition to all other cultural use and access rights of native Hawaiians to other areas of Mauna Kea as provided by law or by other conditions set forth herein.

III. REVISION OF CONDITION No. 18 PURSUANT TO CURRENT LAW

TIO also requests that proposed Condition No. 18 be amended as follows. Condition No. 18 of the HO Proposed Order currently provides that: "TIO will pay a 'substantial' amount for sublease rent. The rent would be deposited into the Mauna Kea Land Fund, and only used for management of Mauna Kea."

In order to comply with current law, and the findings and conclusions in the HO Proposed Order, TIO recommends that the following language be substituted for Condition No. 18 in its entirety: "Any sublease for the site shall be processed as required by current law."

DATED: Honolulu, Hawaii, August 21, 2017.



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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that the foregoing document was served upon the following
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